



General Assembly

February Session, 2016

***Raised Bill No. 5232***

LCO No. 466



Referred to Committee on INSURANCE AND REAL ESTATE

Introduced by:  
(INS)

***AN ACT CONCERNING THE INSURERS REHABILITATION AND LIQUIDATION ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2016*) (a) The provisions of this  
2       section shall apply in accordance with Title II of the Dodd-Frank Wall  
3       Street Reform and Consumer Protection Act, P.L. 111-203, as amended  
4       from time to time, with respect to an insurer that is a covered financial  
5       company, as defined in 12 USC 5381, as amended from time to time.

6       (b) The Insurance Commissioner may file a petition with the clerk of  
7       the superior court for the judicial district of Hartford for an order  
8       authorizing the commissioner to rehabilitate or liquidate a domestic  
9       insurer on any one or more of the following grounds:

10       (1) (A) The Secretary of the Treasury of the United States, in  
11       consultation with the President of the United States, has determined  
12       that the insurer is a financial company that satisfies the requirements  
13       of 12 USC 5383(b), as amended from time to time, (B) such insurer has  
14       been notified by said Secretary of such determination, and (C) the

15 board of directors or similar governing body of such insurer acquiesces  
16 or consents to the appointment of a receiver pursuant to 12 USC  
17 5382(a)(1)(A)(i), as amended from time to time. Such acquiescence or  
18 consent shall be deemed to be consent to an order of rehabilitation or  
19 liquidation;

20 (2) The United States District Court for the District of Columbia has  
21 issued an order pursuant to 12 USC 5382(a)(1)(A)(iv)(I), as amended  
22 from time to time, granting the petition of said Secretary to appoint a  
23 receiver of such insurer under 12 USC 5382(a)(1)(A)(i), as amended  
24 from time to time; or

25 (3) A petition by said Secretary concerning such insurer has been  
26 granted by operation of law pursuant to 12 USC 5382(a)(1)(A)(v), as  
27 amended from time to time.

28 (c) Notwithstanding any other provision of chapter 704 of the  
29 general statutes, the superior court for the judicial district of Hartford  
30 may grant an order of rehabilitation or liquidation under subsection  
31 (b) of this section, after notifying such insurer, within twenty-four  
32 hours after the commissioner has filed the petition for such order. The  
33 filing of the petition shall satisfy the notice requirement to the insurer.  
34 The administrative judge of said district shall appoint a single judge to  
35 handle the petition and order.

36 (d) (1) If said court does not make a determination on such petition  
37 filed by the commissioner within twenty-four hours after such filing,  
38 the order of rehabilitation or liquidation shall be deemed granted at  
39 the expiration of such twenty-four-hour period. At the time such order  
40 is deemed granted under this subdivision, the provisions of chapter  
41 704c of the general statutes shall be deemed to be in effect and the  
42 commissioner shall be deemed to be appointed as the receiver and  
43 have all applicable powers under chapter 704c of the general statutes,  
44 regardless of whether said court has entered an order of rehabilitation  
45 or liquidation.

46       (2) Said court shall expeditiously enter, if an order for rehabilitation  
47       or liquidation is deemed granted pursuant to subdivision (1) of this  
48       subsection, an order for rehabilitation or liquidation that (A) is  
49       effective as of the date such order is deemed granted pursuant to  
50       subdivision (1) of this subsection, and (B) conforms to the provisions  
51       for rehabilitation or liquidation, as applicable, under chapter 704c of  
52       the general statutes.

53       (e) No order of rehabilitation or liquidation under this section shall  
54       be subject to any stay or injunction pending appeal.

55       (f) Nothing in this section shall be construed to supersede or impair  
56       any other power or authority of the commissioner or the Superior  
57       Court under sections 38a-903 to 38a-961 inclusive, of the general  
58       statutes.

59       Sec. 2. Subsection (a) of section 38a-930 of the general statutes is  
60       repealed and the following is substituted in lieu thereof (*Effective*  
61       *October 1, 2016*):

62       (a) (1) A preference is a transfer of any of the property of an insurer  
63       to or for the benefit of a creditor, for or on account of an antecedent  
64       debt, made or suffered by the insurer within one year before the filing  
65       of a successful petition for liquidation under sections 38a-903 to 38a-  
66       961, inclusive, the effect of which transfer may be to enable the creditor  
67       to obtain a greater percentage of this debt than another creditor of the  
68       same class would receive. If a liquidation order is entered while the  
69       insurer is already subject to a rehabilitation order, then such transfers  
70       shall be deemed preferences if made or suffered within one year before  
71       the filing of the successful petition for rehabilitation, or within two  
72       years before the filing of the successful petition for liquidation,  
73       whichever time is shorter.

74       (2) Any preference may be avoided by the liquidator if: (A) The  
75       insurer was insolvent at the time of the transfer; (B) the transfer was  
76       made within four months before the filing of the petition; (C) the

77 creditor receiving it or to be benefited thereby or [his] such creditor's  
78 agent acting with reference thereto had, at the time when the transfer  
79 was made, reasonable cause to believe that the insurer was insolvent  
80 or was about to become insolvent; or (D) the creditor receiving it was  
81 an officer, or any employee or attorney or other person who was in fact  
82 in a position of comparable influence in the insurer to an officer  
83 whether or not [he] such employee, attorney or other person held such  
84 position, or any shareholder holding directly or indirectly more than  
85 five per [centum] cent of any class of any equity security issued by the  
86 insurer, or any other person, firm, corporation, association, or  
87 aggregation of persons with whom the insurer did not deal at arm's  
88 length.

89 (3) Where the preference is voidable, the liquidator may recover the  
90 property, or if it has been converted, its value from any person who  
91 has received or converted the property, except where a bona fide  
92 purchaser or lienor has given less than fair equivalent value, [he] such  
93 purchaser or lienor shall have a lien upon the property to the extent of  
94 the consideration actually given by [him] such purchaser or lienor.  
95 Where a preference by way of lien or security title is voidable, the  
96 court may on due notice order the lien or title to be preserved for the  
97 benefit of the estate, in which event the lien or title shall pass to the  
98 liquidator.

99 (4) Notwithstanding subdivisions (1) to (3), inclusive, of this  
100 subsection, a transfer pursuant to a commutation of a reinsurance  
101 agreement that is approved by the commissioner or the  
102 commissioner's designated appointee under section 38a-962d shall not  
103 be voidable as a preference. For the purposes of this subdivision, a  
104 commutation of a reinsurance agreement is the elimination of all  
105 present and future obligations between the parties, arising from the  
106 reinsurance agreement, in exchange for a current consideration.

107 Sec. 3. Subsection (a) of section 38a-944a of the general statutes is  
108 repealed and the following is substituted in lieu thereof (*Effective*

109 October 1, 2016):

110 (a) (1) Notwithstanding any provision of sections 38a-903 to 38a-961,  
 111 inclusive, including any provision permitting the modification of  
 112 contracts, or other law of a state, and subject to the provisions of  
 113 subdivision (2) of this subsection, no person shall be stayed or  
 114 prohibited from exercising: [(1)] (i) A contractual right to terminate,  
 115 liquidate, accelerate or close out any netting agreement or qualified  
 116 financial contract with an insurer because of: [(A)] (i) The insolvency,  
 117 financial condition or default of the insurer at any time, provided that  
 118 the right is enforceable under applicable law other than sections 38a-  
 119 903 to 38a-961, inclusive, or [(B)] (ii) the commencement of a formal  
 120 delinquency proceeding under sections 38a-903 to 38a-961, inclusive; [. (2) Any] (B) any right under a pledge, security, collateral or guarantee  
 122 agreement or any other similar security arrangement or credit support  
 123 document relating to a netting agreement or qualified financial  
 124 contract; [. (3) Subject] (C) subject to any provision of subsection (b) of  
 125 section 38a-932, any right to set off or net out any termination value,  
 126 payment amount [,] or other transfer obligation arising under or in  
 127 connection with a netting agreement or qualified financial contract  
 128 where the counterparty or its guarantor is organized under the laws of  
 129 the United States or a state or foreign jurisdiction approved by the  
 130 Securities Valuation Office of the National Association of Insurance  
 131 Commissioners as eligible for netting.

132 (2) No person who is a party to a netting agreement or qualified  
 133 financial contract with an insurer that is the subject of an insolvency  
 134 proceeding may exercise any contractual right to terminate, liquidate,  
 135 accelerate or close out the obligations with respect to such agreement  
 136 or contract because of the insolvency, financial condition or default of  
 137 the insurer, or by the commencement of a formal delinquency  
 138 proceeding under sections 38a-903 to 38a-961, inclusive, (A) until five  
 139 o'clock p.m., eastern standard time, on the business day following the  
 140 date of appointment of a receiver, or (B) after such person has received  
 141 notice that such agreement or contract has been transferred pursuant

142 to the provisions of this section.

143 Sec. 4. Subsection (b) of section 38a-140 of the general statutes is  
144 repealed and the following is substituted in lieu thereof (*Effective*  
145 *October 1, 2016*):

146 (b) Whenever it appears to the commissioner that any person has  
147 committed a violation of sections 38a-129 to 38a-140, inclusive, that so  
148 impairs the financial condition of a domestic insurance company as to  
149 threaten insolvency or make the further transaction of business by it  
150 hazardous to its policyholders, creditors, securityholders or the public,  
151 the commissioner may proceed as provided in [section 38a-18] chapter  
152 704c to take possession of the property of such domestic insurance  
153 company and to conduct the business thereof.

154 Sec. 5. Section 38a-18 of the general statutes is repealed. (*Effective*  
155 *October 1, 2016*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	New section
Sec. 2	<i>October 1, 2016</i>	38a-930(a)
Sec. 3	<i>October 1, 2016</i>	38a-944a(a)
Sec. 4	<i>October 1, 2016</i>	38a-140(b)
Sec. 5	<i>October 1, 2016</i>	Repealer section

**Statement of Purpose:**

To (1) update the Insurers Rehabilitation and Liquidation Act to reflect provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act, (2) provide that a transfer pursuant to a commutation of a reinsurance agreement shall not be voidable as a preference, (3) specify limits on when a party to a netting agreement or qualified financial contract with an insolvent insurer may exercise such party's right to terminate, liquidate, accelerate or close out obligations with respect to such agreement or contract, and (4) delete an obsolete provision concerning insurer receivership and make a conforming change.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*